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FM AMEMBASSY HARARE
TO SECSTATE WASHDC 7991
INFO NSC WASHDC
USDOC WASHDC
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 000240

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR GAYLE SMITH
USDOC FOR DHENKE-ROGERS
LONDON FOR CGURNEY
PARIS FOR BWILLIAMS
NAIROBI FOR PFLAUMER

USTR FOR ROSA WHITAKER

E.O. 12958: DECL 01/12/11

TAGS: PGOV EAGR PREL ZI

SUBJECT: STILL NO OFFICIAL REACTION TO THE SUPREME
COURT RULING ON THE CFU LAND CASE, JUST GENERALIZED
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ATTACKS ON THE JUDICIARY

CLASSIFIED BY CHARGE D' AFFAIRES EARL M. IRVING FOR
REASONS 1.5 (B/D).

REFS: A. (00) HARARE 7286, B. (00) HARARE 6547, C. (00)
HARARE 6330, D. (00) HARARE 5469, E. (00) HARARE 5337,

¶11. (C) SUMMARY: AS OF JANUARY 11, THERE IS STILL NO
OFFICIAL GOVERNMENT OF ZIMBABWE (GOZ) STATEMENT OR
REACTION TO THE SUPREME COURT RULING OF DECEMBER 21 IN
FAVOR OF THE COMMERCIAL FARMERS UNION (CFU) IN THEIR
LAWSUIT ON THE CONSTITUTIONALITY OF THE "FAST-TRACK"
LAND RESETTLEMENT PROGRAM (REF A). THERE HAVE, HOWEVER,
BEEN NUMEROUS VERBAL ATTACKS ON THE JUDICIARY BY HIGH-
LEVEL GOZ OFFICIALS. AT THE OPENING OF THE HIGH COURT
IN BULAWAYO ON JANUARY 8, THE JUDGE PRESIDENT OF THE
HIGH COURT, GODFREY CHIDYAUSIKU, AN ARDENT MUGABE AND
ZANU-PF SUPPORTER, LAUNCHED INTO A DIATRIBE AGAINST THE
SUPREME COURT AND ITS POSITION ON THE LAND REFORM ISSUE,
STATING THAT THE COURT HAD EFFECTIVELY INVITED THE CFU
TO SUE THE GOZ OVER THE LAND PROGRAM BY THE COURT'S
PUBLIC STATEMENTS ON THE PROGRAM'S CONSTITUTIONALITY. TWO
DAYS LATER ON JANUARY 10, AT A CAMPAIGN APPEARANCE FOR A
PARLIAMENTARY BY-ELECTION, VICE PRESIDENT MUZENDA
STRONGLY CRITICIZED THE SUPREME COURT FOR UPHOLDING
COLONIAL-ERA LAWS THAT DEPRIVE BLACK ZIMBABWEANS OF
THEIR RIGHTFUL HERITAGE OF THE LAND. END SUMMARY.

HIGH COURT JUDGE PRESIDENT ATTACKS THE SUPREME COURT
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¶12. (C) ON JANUARY 9 THE GOZ-CONTROLLED "THE HERALD"
NEWSPAPER REPORTED THAT ON THE OCCASION OF OFFICIAL
ANNUAL OPENING OF THE HIGH COURT IN BULAWAYO ON JANUARY
8, THE JUDGE PRESIDENT OF THE HIGH COURT, GODFREY
CHIDYAUSIKU, LASHED OUT AT THE SUPREME COURT FOR ITS
ROLE IN THE LAND REFORM PROCESS IN ZIMBABWE. (COMMENT:
THE JUDGE PRESIDENT IS CONSIDERED BY MOST OBSERVERS TO
BE AN ARDENT SUPPORTER OF PRESIDENT MUGABE AND ZANU-PF,
AND THERE IS SPECULATION THAT WITH THE TIRELESS LOBBYING
OF HIS FRIEND, MINISTER OF STATE FOR INFORMATION AND
PUBLICITY JONATHAN MOYO, HE WILL BE NAMED CHIEF JUSTICE
OF THE SUPREME COURT BY MUGABE WHEN THE CURRENT CHIEF
JUSTICE RETIRES IN 2002. END COMMENT.) CHIDYAUSIKU DID
NOT SPECIFICALLY MENTION THE DECEMBER 21 SUPREME COURT
RULING. INSTEAD, HE ALLEGED THAT SUPREME COURT CHIEF
JUSTICE ANTONY GUBBAY GAVE COMMERCIAL FARMERS THE GREEN
LIGHT TO SUE WHEN, IN JANUARY 1991, HE CRITICIZED
PROVISIONS OF A CONSTITUTIONAL AMENDMENT BILL THAT

SOUGHT TO GIVE THE GO THE POWER TO COMPULSORILY ACQUIRE LAND FOR RESETTLEMENT WITHOUT PAYING COMPENSATION. HE ADDED THAT GUBBAY'S COMMENTS ASSURED THE FARMERS THAT THEIR LEGAL ACTIONS WOULD BE SUCCESSFUL. IN ADDITION, CHIDYAUSIKU CRITICIZED THE SUPREME COURT'S RULING OVERTURNING HIS OWN RULING THAT GRANTED A STAY OF EXECUTION OF THE NOVEMBER 10 SUPREME COURT CONSENT ORDER REQUIRING THE GOZ TO REMOVE ILLEGAL OCCUPIERS FROM FARMS WITH ALL DUE SPEED (REF B). WHILE ACKNOWLEDGING THAT THE RULING WAS BINDING ON THE HIGH COURT, HE ADDED THAT HE HAD DIFFICULTY ACCEPTING THE CORRECTNESS OF THE

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RULING FOR VARIOUS REASONS. PRINCIPAL AMONG THESE WAS THAT THE GOZ HAD MADE CLEAR THAT "LAND REDISTRIBUTION IS A POLITICAL ISSUE AND NOT A LEGAL ISSUE."

13. (U) CHIDYAUSIKU IS REPORTED AS SAYING, "THE CONTROVERSY SURROUNDING THE LAND ISSUE HAS BECOME A MINEFIELD FOR THE JUDICIARY. I ONLY HOPE IT DOES NOT BECOME THE GRAVEYARD FOR THE JUDICIARY." LAWYERS PRESENT AT THE HIGH COURT OPENING OBSERVED THAT CHIDYAUSIKU WAS SO PREOCCUPIED WITH CRITICIZING THE SUPREME COURT THAT HE NEVER ACTUALLY ANNOUNCED THE FORMAL OPENING OF THE NEW SESSION OF THE HIGH COURT, THE POINT OF THE JUDGE'S PUBLIC APPEARANCE AND STATEMENT.

VICE PRESIDENT MUZENDA ALSO ATTACKS THE JUDICIARY

14. (U) VICE PRESIDENT SIMON MUZENDA IN HIS CAPACITY AS ACTING PRESIDENT (PRESIDENT MUGABE WAS ON HOLIDAY IN MALAYSIA) FOLLOWED UP CHIDYAUSIKU'S DIATRIBE AGAINST THE JUDICIARY WITH HIS OWN AT A JANUARY 10 CAMPAIGN RALLY

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HELD IN BIKITA WEST FOR THE UPCOMING PARLIAMENTARY BY-ELECTION. MUZENDA CRITICIZED THE JUDICIARY FOR GIVING FAVORABLE JUDGEMENTS TO COMMERCIAL FARMERS AT THE EXPENSE OF THE MAJORITY OF BLACKS THAT REMAIN LANDLESS AND IMPOVERISHED. MUZENDA STATED THAT HE FAILED "TO UNDERSTAND JUDGES WHO, IN THEIR JUDGEMENT, ACKNOWLEDGE THAT ZIMBABWEANS WERE COLONIZED...DEPRIVED OF THEIR LAND...AND THEIR RIGHTS BY WHITE COLONIZERS. YET THEY PROCEED, WITHIN THE SAME JUDGEMENT, TO INSIST ON THE SANCTITY OF THE PROPERTY RIGHTS OF THE SAME WHITE MAN WHO TODAY THRIVES ON ILL-GOTTEN WEALTH."

15. (C) COMMENT: THE ABSENCE OF AN OFFICIAL GOZ COMMENT ON THE DECEMBER 21 SUPREME COURT RULING, WHILE GOZ OFFICIALS MAKE SCURVILOUS ATTACKS ON THE JUDICIARY, INDICATES TO US THAT PRESIDENT MUGABE MAY STILL BE CONSIDERING HIS OPTIONS ON LAND REFORM. THE SUPREME COURT RULING DID LEAVE MUGABE AND THE GOZ SOME WIGGLE

ROOM ON ITS LAND RESETTLEMENT PROGRAM, AND THEY CONTINUE TO HOLD OUT HOPE THAT DONORS WILL RETURN TO ZIMBABWE WITH MONEY FOR LAND REFORM. END COMMENT.

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